

DEBTOR AND CREDITOR RELATIONSHIPS

CHAPTER 119

HOUSE BILL NO. 1135

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact sections 13-02.1-11, 13-02.1-12, and 13-02.1-13 of the North Dakota Century Code, relating to the Uniform Voidable Transactions Act; to amend and reenact sections 13-02.1-01, 13-02.1-02, 13-02.1-04, 13-02.1-05, 13-02.1-06, 13-02.1-07, 13-02.1-08, and 13-02.1-09 of the North Dakota Century Code, relating to renaming the Uniform Fraudulent Transfers Act the Uniform Voidable Transactions Act and making revisions; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-01. Definitions.

As used in this chapter:

1. "Affiliate" means:

- a. A person ~~whethat~~ directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person ~~whethat~~ holds the securities as:

(1) As a fiduciary or agent without sole discretionary power to vote the securities; or ~~solely~~

(2) Solely to secure a debt, if the person has not in fact exercised the power to vote;

- b. A corporation or a limited liability company twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by a person ~~whethat~~ directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person ~~whethat~~ holds the securities as:

(1) As a fiduciary or agent without sole discretionary power to vote the securities; or ~~solely~~

(2) Solely to secure a debt, if the person has not in fact exercised the power to vote;

- c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
 - d. A person ~~who~~that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
2. "Asset" means property of a debtor, excluding property to the extent it is encumbered by a valid lien, property to the extent it is generally exempt under nonbankruptcy law, or an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.
 3. "Claim", except as used in "claim for relief", means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
 4. "Creditor" means a person ~~who~~that has a claim.
 5. "Debt" means liability on a claim.
 6. "Debtor" means a person ~~who~~that is liable on a claim.
 7. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 8. "Insider" ~~means~~includes:
 - a. If the debtor is an individual, ~~an "insider" includes a:~~
 - (1) ~~A~~ relative of the debtor or of a general partner of the debtor, ~~a;~~
 - (2) ~~A~~ partnership in which the debtor is a general partner, ~~a;~~
 - (3) ~~A~~ general partner in a partnership ~~in which the debtor is a general partner, as described in paragraph 2; or~~
 - (4) ~~A~~ corporation of which the debtor is a director, officer, or person in control, or a limited liability company of which the debtor is a governor, manager, or person in control, ~~;~~
 - b. If the debtor is a corporation, ~~an "insider" includes a:~~
 - (1) ~~A~~ director of the debtor, ~~an;~~
 - (2) ~~An~~ officer of the debtor, ~~a;~~
 - (3) ~~A~~ person in control of the debtor, ~~a;~~
 - (4) ~~A~~ partnership in which the debtor is a general partner, ~~a;~~
 - (5) ~~A~~ general partner in a partnership ~~in which the debtor is a general partner, described in paragraph 4; or a~~

- (6) ~~A relative of a general partner, director, officer, or person in control of the debtor;~~
- c. If the debtor is a partnership, ~~an "insider" includes a:~~
- (1) ~~A general partner in the debtor;~~
 - (2) ~~A relative of a general partner in, of a general partner of, or of a person in control of the debtor;~~ ~~another;~~
 - (3) ~~Another~~ partnership in which the debtor is a general partner;
 - (4) ~~A general partner in a partnership in which the debtor is a general partner;~~ ~~described in paragraph 3;~~ or a
 - (5) ~~A person in control of the debtor;~~
- d. If the debtor is a limited liability company, ~~an "insider" includes a:~~
- (1) ~~A governor of the debtor;~~
 - (2) ~~A manager of the debtor;~~
 - (3) ~~A person in control of the debtor;~~
 - (4) ~~A partnership in which the debtor is a general partner;~~
 - (5) ~~A general partner in a partnership in which the debtor is a general partner;~~ ~~described in paragraph 4;~~ or a
 - (6) ~~A relative of a general partner, governor, manager, or person in control of the debtor;~~ ~~and~~
- e. An "insider" also includes an affiliate, or an insider of an affiliate as if the affiliate were the debtor, and a managing agent of the debtor.
- 8-9. "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien, a common-law lien, or a statutory lien.
10. "Organization" means a person other than an individual.
- 9-11. "Person" means an individual, ~~partnership, corporation, limited liability company, association, organization, estate, business or nonprofit entity, public corporation, government or governmental subdivision or agency, business trust, estate, trust or instrumentality,~~ or any other legal or commercial entity.
- 40-12. "Property" means anything that may be the subject of ownership.
13. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 44-14. "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

15. "Sign" means, with present intent to authenticate or adopt a record:

- a. To execute or adopt a tangible symbol; or
- b. To attach to or logically associate with the record an electronic symbol, sound, or process.

12-16. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

13-17. "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal process or proceedings.

SECTION 2. AMENDMENT. Section 13-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-02. Insolvency.

1. A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than ~~all~~the sum of the debtor's assets ~~at a fair valuation~~.
2. A debtor ~~who~~that is generally not paying the debtor's debts as they become due ~~other than as a result of a bona fide dispute~~ is presumed to be insolvent. ~~A partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.~~
- ~~2-3.~~ Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.
- ~~3-4.~~ Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

SECTION 3. AMENDMENT. Section 13-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-04. ~~Transfers fraudulent~~Transfer or obligation voidable as to present and/or future creditorscreditor.

1. A transfer made or obligation incurred by a debtor is ~~fraudulent~~voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - a. With actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - b. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of

- the debtor were unreasonably small in relation to the business or transaction or the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
2. In determining actual intent under subdivision a of subsection 1, consideration may be given, among other factors, to whether:
 - a. The transfer or obligation was to an insider;
 - b. The debtor retained possession or control of the property transferred after the transfer;
 - c. The transfer or obligation was disclosed or concealed;
 - d. Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
 - e. The transfer was of substantially all the debtor's assets;
 - f. The debtor absconded;
 - g. The debtor removed or concealed assets;
 - h. The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
 - i. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
 - j. The transfer occurred shortly before or shortly after a substantial debt was incurred; and
 - k. The debtor transferred the essential assets of the business to a lienor ~~whethat~~ transferred the assets to an insider of the debtor.
 3. A creditor making a claim for relief under subsection 1 has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 4. AMENDMENT. Section 13-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-05. ~~Transfers fraudulent~~Transfer or obligation voidable as to present creditors~~creditor.~~

1. A transfer made or obligation incurred by a debtor is ~~fraudulent~~voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
2. A transfer made by a debtor is ~~fraudulent~~voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for

an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

3. Subject to subsection 2 of section 13-02.1-02, a creditor making a claim for relief under subsection 1 or 2 has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 5. AMENDMENT. Section 13-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-06. When transfer is made or obligation is incurred.

For the purposes of this chapter:

1. A transfer is made with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against ~~whom~~which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee. A transfer is made with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.
2. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed to have been made immediately before the commencement of the action.
3. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee.
4. A transfer is not made until the debtor has acquired rights in the asset transferred.
5. An oral obligation is incurred when it becomes effective between the parties. An obligation evidenced by a ~~writing~~record is incurred when the ~~writing~~executed record signed by the obligor is delivered to or for the benefit of the obligee.

SECTION 6. AMENDMENT. Section 13-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-07. Remedies of ~~creditors~~creditor.

1. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in section 13-02.1-08, may obtain:
 - a. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
 - b. Attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with the procedure prescribed by chapter 32-08.1~~if available under applicable law; or

- c. Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, ~~an~~:
- (1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property, ~~an appointment~~;
 - (2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee, ~~or any~~
 - (3) Any other relief the circumstances may require.
2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

SECTION 7. AMENDMENT. Section 13-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-08. Defenses - Liability - Protection of transferee or obligee.

1. A transfer or obligation is not voidable under subdivision a of subsection 1 of section 13-02.1-04 against a person ~~whethat~~ took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.
2. To the extent a transfer is avoidable in an action by the creditor under subdivision a of subsection 1 of section 13-02.1-07, the following rules apply:
 - a. ~~Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under subdivision a of subsection 1 of section 13-02.1-07, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the:~~
 - (1) The first transferee of the asset or the person for whose benefit the transfer was made, ~~or any subsequent transferee~~
 - (2) An immediate or mediate transferee of the first transferee, other than a:
 - (a) A good-faith transferee ~~whethat~~ took for value, ~~or from any subsequent transferee~~
 - (b) An immediate or mediate good-faith transferee of a person described in subparagraph a.
 - b. Recovery pursuant to subdivision a of subsection 1 of section 13-02.1-07 or subsection 2 of section 13-02.1-07 of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph 1 or 2 of subdivision a.
3. If the judgment under subsection 2 is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

4. Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to a:
 - a. A lien on or a right to retain anyan interest in the asset transferred, enforcement;
 - b. Enforcement of anyan obligation incurred; or a
 - c. A reduction in the amount of the liability on the judgment.
5. A transfer is not voidable under subdivision b of subsection 1 of section 13-02.1-04 or section 13-02.1-05 if the transfer results from termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law or enforcement of a security interest in compliance with chapter 41-09, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.
6. A transfer is not voidable under subsection 2 of section 13-02.1-05:
 - a. To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless, except to the extent the new value was secured by a valid lien;
 - b. If made in the ordinary course of business or financial affairs of the debtor and the insider; or
 - c. If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.
7. The following rules determine the burden of proving matters referred to in this section:
 - a. A party that seeks to invoke subsection 1, 4, 5, or 6 has the burden of proving the applicability of that subsection.
 - b. Except as otherwise provided in subdivision c or d, the creditor has the burden of proving each applicable element of subsection 2 or 3.
 - c. The transferee has the burden of proving the applicability to the transferee of subparagraph a or b of paragraph 2 of subdivision a of subsection 2.
 - d. A party that seeks adjustment under subsection 3 has the burden of proving the adjustment.
8. The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

SECTION 8. AMENDMENT. Section 13-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-09. Extinguishment of claim for relief.

A claim for relief with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

1. Under subdivision a of subsection 1 of section 13-02.1-04, ~~within not later than~~ four years after the transfer was made or the obligation was incurred or, if later, ~~within not later than~~ one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
2. Under subdivision b of subsection 1 of section 13-02.1-04 or subsection 1 of section 13-02.1-05, ~~within not later than~~ four years after the transfer was made or the obligation was incurred; or
3. Under subsection 2 of section 13-02.1-05, ~~within not later than~~ one year after the transfer was made ~~or the obligation was incurred~~.

SECTION 9. Section 13-02.1-11 of the North Dakota Century Code is created and enacted as follows:

13-02.1-11. Governing law.

1. In this section, the following rules determine a debtor's location:
 - a. A debtor who is an individual is located at the individual's principal residence.
 - b. A debtor that is an organization and has only one place of business is located at its place of business.
 - c. A debtor that is an organization and has more than one place of business is located at its chief executive office.
2. A claim for relief in the nature of a claim for relief under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

SECTION 10. Section 13-02.1-12 of the North Dakota Century Code is created and enacted as follows:

13-02.1-12. Application to series organization.

1. In this section:
 - a. "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision b.
 - b. "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:
 - (1) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.
 - (2) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not

against the property of or associated with the organization or other protected series of the organization.

(3) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

2. A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

SECTION 11. Section 13-02.1-13 of the North Dakota Century Code is created and enacted as follows:

13-02.1-13. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modified, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C. 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)], or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

SECTION 12. APPLICATION. This Act applies to a transfer made or obligation incurred on or after the effective date of this Act. This Act does not apply to a transfer made or obligation incurred before the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act. For the foregoing purposes a transfer is made and an obligation is incurred at the time provided in section 5 of this Act.

Approved March 25, 2015

Filed March 25, 2015

CHAPTER 120

HOUSE BILL NO. 1101

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact sections 13-04.1-18, 13-08-16, and 13-11-31 of the North Dakota Century Code, relating to the customer information of money brokers, deferred presentment service providers, and debt-settlement providers; to amend and reenact sections 13-04.1-01.1, 13-04.1-02.1, 13-04.1-04, 13-04.1-09, 13-04.1-15, 13-05-04, and 13-05-05.1, subsection 13 of section 13-09-02, sections 13-09-03 and 13-09-07.1, and subsections 1 and 2 of section 13-10-03 of the North Dakota Century Code, relating to money brokers, collection agencies, money transmitters, and mortgage loan originators; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-01.1. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Borrower" means a person or entity that seeks out, or is solicited by a money broker for the purpose of money brokering.
2. "Commissioner" means the commissioner of financial institutions.
3. "Money broker" means a person or entity who, in the ordinary course of business, engages in money brokering.
4. "Money brokering" means the act of arranging or providing loans or leases as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes.
5. "Net branch" means an office at which a licensed money broker allows a separate person that does not hold a valid North Dakota money brokers license to originate loans under the license of the money broker.
6. "Net branch arrangement" means an arrangement under which a licensed money broker enters an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits or losses, establishing, leasing, or renting the branch premises, entering other contractual relationships with vendors such as for telephones, utilities, and advertising, having control of a corporate checkbook, or exercising control of personnel through the power to hire or fire such individuals. A person may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or

through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.

7. "Precomputed loan" means a loan that is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

SECTION 2. AMENDMENT. Section 13-04.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02.1. Entities exempted from licensing requirements.

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;
5. Individuals licensed under chapter 13-10;
6. State or federal agencies and their employees;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. Any other person or business regulated and licensed to lend money by the state of North Dakota;
10. A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson; or
11. Any person, retail seller, or manufacturer providing lease financing for its own property or inventory held as a normal course of business, or to leases on any real property.

SECTION 3. AMENDMENT. Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-04. Fee to accompany application for money broker license.

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for the annual license fee. In

addition, the applicant must pay a fifty dollar annual fee for each branch location ~~within the registered to engage in money brokering in this state~~. Fees must be deposited in the financial institutions regulatory fund.

SECTION 4. AMENDMENT. Section 13-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-09. Prohibited acts and practices.

It is a violation of this chapter for a person subject to this chapter to knowingly:

1. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.
7. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.
10. Make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising.
11. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and

registry or in connection with any investigation conducted by the commissioner or another governmental agency.

12. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
14. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in money broker business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.
17. Enter any agreement that constitutes a precomputed loan.

SECTION 5. AMENDMENT. Section 13-04.1-15 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-15. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. ~~In addition, the licensee shall submit the original license certificate for reissue.~~

SECTION 6. Section 13-04.1-18 of the North Dakota Century Code is created and enacted as follows:

13-04.1-18. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all money brokers licensed under this chapter.

SECTION 7. AMENDMENT. Section 13-05-04 of the North Dakota Century Code is amended and reenacted as follows:

13-05-04. Application requirements - Fee to accompany application for collection agency license.

The application for a collection agency license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members as will provide the basis for the investigation and findings contemplated by section 13-05-03. At the time of

making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of ~~three~~four hundred dollars for the annual license. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund.

SECTION 8. AMENDMENT. Section 13-05-05.1 of the North Dakota Century Code is amended and reenacted as follows:

13-05-05.1. Change of name or address.

A licensee is required to submit within twenty business days of the date of change, notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. ~~In addition, the licensee shall submit the original license certificate for reissue.~~

SECTION 9. Section 13-08-16 of the North Dakota Century Code is created and enacted as follows:

13-08-16. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all persons licensed under this chapter.

SECTION 10. AMENDMENT. Subsection 13 of section 13-09-02 of the North Dakota Century Code is amended and reenacted as follows:

13. "Money transmission" means to engage in the business of the sale or issuance of payment instruments, stored value, or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, "money transmission" also includes bill payment services not limited to the right to receive payment of any claim for another, but does not include payment processing activities conducted for a merchant under an agency relationship.

SECTION 11. AMENDMENT. Section 13-09-03 of the North Dakota Century Code is amended and reenacted as follows:

13-09-03. Exclusions.

This chapter does not apply to:

1. The United States or any department, agency, or instrumentality thereof;
2. The United States post office;
3. The state or any political subdivisions thereof;
4. Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, or savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks~~but this exemption does not extend to any other person acting on behalf of any such excluded entity;~~

5. The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in federal reserve board regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof; and
6. Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in section 13-09-15.

SECTION 12. AMENDMENT. Section 13-09-07.1 of the North Dakota Century Code is amended and reenacted as follows:

13-09-07.1. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. ~~In addition, the licensee shall submit the original license certificate for reissue.~~

SECTION 13. AMENDMENT. Subsections 1 and 2 of section 13-10-03 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual, unless specifically exempted from this chapter under subsection 3~~2~~, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
2. The following are exempt from this chapter:
 - a. Registered mortgage loan originators, when acting for an entity described in subdivision a of subsection 11 of section 13-10-02 are exempt from this chapter.
 - b. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
 - c. Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
 - d. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.
 - e. An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator solely pursuant to that individual's official duties as an employee of the federal, state, or local government agency or housing finance agency in compliance with title 12, Code of Federal Regulations, part 1008, section 1008.103(e)(6).
 - f. An individual who is an employee of a bona fide nonprofit organization who acts as a loan originator solely with respect to that individual's work

duties to the bona fide nonprofit organization, and who acts as a loan originator solely with respect to residential mortgage loans with terms that are favorable to the borrower in compliance with title 12, Code of Federal Regulations, part 1008, section 1008.103(e)(7).

SECTION 14. Section 13-11-31 of the North Dakota Century Code is created and enacted as follows:

13-11-31. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all debt-settlement providers licensed under this chapter.

SECTION 15. EMERGENCY. Section 13 of this Act is declared to be an emergency measure.

Approved April 9, 2015
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